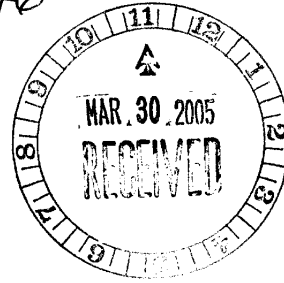


213646

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March 29, 2005

Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20006

VIA FED EX

**RE: STB Docket No. AB-55 (Sub-No. 568X)  
CSX Transportation, Inc. -- Abandonment  
Exemption in Franklin County, Pennsylvania**

Dear Mr. Williams:

Enclosed herewith please find the original and 11 copies of the Surreply of New Franklin Properties, LLC ("NFP"). On behalf of NFP, we respectfully request that the Board grant NFP permission to file the enclosed Surreply.


Please file the original and 10 copies, and stamp and return one of the copies to us in the enclosed self-addressed, stamped envelope.

If you need anything further from us to complete the filing of the Surreply, then please do not hesitate to contact me. Thank you for your courtesy and assistance in this matter.

Very truly yours,

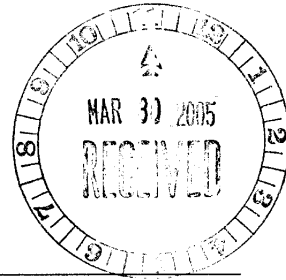
BECKLEY & MADDEN

By:

  
Charles O. Beckley, II

cc: Louis E. Gitomer, Esquire (via Fed Ex)  
Thomas J. Finucane, Esquire (via Fed Ex)  
Mr. Frederick Armstrong Fox

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



---

DOCKET NO. AB-55 (SUB-NO. 568X)

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MAR 30 2005  
Part of  
Public Record

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CSX TRANSPORTATION, INC.  
ABANDONMENT EXEMPTION  
IN FRANKLIN COUNTY, PENNSYLVANIA

---

**SURREPLY OF NEW FRANKLIN PROPERTIES, LLC**

---

DATED: March 29, 2005

Thomas A. Beckley, Esquire  
Charles O. Beckley, II, Esquire

**BECKLEY & MADDEN**  
212 North Third Street  
P. O. Box 11998  
Harrisburg, PA 17108-1998  
(717) 233-7691

Attorneys for Petitioner  
New Franklin Properties, LLC

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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DOCKET NO. AB-55 (SUB-NO. 568X)

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CSX TRANSPORTATION, INC.  
ABANDONMENT EXEMPTION  
IN FRANKLIN COUNTY, PENNSYLVANIA

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**SURREPLY OF NEW FRANKLIN PROPERTIES, LLC**

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On March 1, 2005, New Franklin Properties, LLC ("NFP"), filed a petition, pursuant to 49 C.F.R. §1117.1, for reconsideration of the Board's decision issued on July 8, 2004, and, pursuant to 49 C.F.R. §1152.25(e), to reopen the Board's decision served on March 9, 1999. NFP seeks the Board's permission to file an Offer of Financial Assistance for Segment 1 of the section of rail line that CSX Transportation, Inc. ("CSXT"), plans to abandon in Chambersburg, Franklin County, Pennsylvania. NFP also asked the Board to afford its petition expedited consideration, and to stay CSXT's right to exercise its abandonment authority for Segment 1 pending the Board's disposition of NFP's petition.

The Borough of Chambersburg ("the Borough") filed a reply to NFP's petition on March 16, 2005. The Borough incorporated into its reply the reply that would be filed by CSXT. CSXT filed its reply on March 21, 2005. NFP respectfully files this surreply to the replies filed by the Borough and CSXT. NFP wishes to make three points to the Board.

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***A. BECAUSE CIRCUMSTANCES HAVE CHANGED  
SUBSTANTIALLY SINCE THE BOARD ISSUED ITS JULY 8,  
2004, AND MARCH 9, 1999, DECISIONS, THE BOARD  
SHOULD NOW PERMIT NFP TO FILE AN OFA FOR  
SEGMENT 1***

**1. The July 8, 2004, Decision**

CSXT mischaracterizes NFP's petition as an "appeal." It is not. NFP has asked the Board to reconsider its July 8, 2004, Decision, and to reopen its March 9, 1999, Decision, based on changed circumstances. As noted in NFP's petition, more than a year ago CSXT opposed NFP's previous request to file an OFA for Segment 1 because, at that time, CSXT sought "an expeditious end to this abandonment proceeding;" because CSXT said it was "anxious to dispose of Segment 1;" because CSXT wanted "to dispose of Segment 1 expeditiously;" and because CSXT feared (in February, 2004) "that it could be five months after the Board's decision before CSXT sold Segment 1 to ... NFP." (*February 27, 2004, Reply of CSX Transportation, Inc.*, p.p. 1, 7, 8; *March 18, 2004, Reply of CSX Transportation, Inc., to Motion to Strike*, p. 4).

Now, more than a year later, CSXT still has not disposed of Segment 1. In fact, CSXT has requested, and the Board has granted, an extension of time until September 27, 2005, a date still six months in the future, to consummate the abandonment of Segment 1. CSXT has offered no explanation concerning why Segment 1 (which has never been the subject of either an OFA or a trail use request) remains in CSXT's possession.

The circumstance which has changed since the Board issued its July 8, 2004, Decision is that any sense of urgency concerning the disposition of Segment 1 which CSXT may have felt in February, 2004 – and upon which CSXT grounded its opposition to NFP's previous petition – has obviously long since passed. CSXT can no longer make (nor does it even try to make) any

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credible claim concerning delay with regard to Segment 1. The basis for CSXT's opposition to NFP's request to file an OFA for Segment 1 no longer exists.

## **2. The March 9, 1999, Decision**

NFP first wishes to note to the Board that **NFP could not have filed a timely OFA in March, 1999, for the simple reason that NFP did not exist.** As evidenced by the print-out from the Corporations Bureau of the Pennsylvania Department of State which is attached hereto as Exhibit A, **NFP was not formed until December 17, 2001.** The Chambersburg Engineering Company ("CECO"), the former owner of the property served by Segment 1, did not go out of business until December, 2001, or January, 2002. The opportunity to acquire CECO's real property did not present itself to NFP until July 30, 2002. After NFP purchased CECO's property and negotiations relating to Segments 1 and 2 broke down between Frederick Armstrong Fox (NFP's owner), Frederick A. Fox and the Borough, the Foxes in August, 2003, and NFP in September, 2003, sought the Board's permission to file an OFA for Segment 1.<sup>1</sup> **CSXT expressed no opposition to the petition to file an OFA for Segment 1 until more than six months later, on February 27, 2004.**

In short, any implication by CSXT that NFP did not act promptly to acquire Segment 1 through the OFA process is not supported by the record in this proceeding.

The changed circumstances which warrant the reopening of the Board's March 9, 1999, Decision to permit NFP to file an OFA for Segment 1 are many and may be summarized as follows:

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<sup>1</sup>In response to the Borough's eleventh-hour attempt to acquire Segment 1 from CSXT in September, 2003, the Board entered an Order on September 17, 2003, granting the Foxes' motion for an order staying CSXT's right to exercise its abandonment authority with regard to Segment 1.

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- CECO, the owner of the property served by Segment 1 went out of business in December, 2001, or January, 2002.

- On July 30, 2002, NFP acquired CECO's real property.

- NFP's property is now occupied by Gaumer Industries ("GI") and Gaumer's Chassis Engineering ("GCE"), both of which are manufacturers of chassis and suspension components for heavy trucks which distribute their products nationwide.

- To remain competitive with their foreign competitors, GI and GCE need to purchase in bulk the raw materials used in their casting operation.

- GI and GCE need rail service now. In order to accommodate rail deliveries, the track on NFP's property must be repaired and upgraded.

- NFP stands ready to make the infrastructure improvements on its property necessary to accommodate rail deliveries to GI and GCE, but NFP does not wish to undertake this expense unless it can control its access to rail service through its ownership of Segment 1.

- NFP can and will maintain Segment 1, which includes two bridges, in a condition suitable for rail service. The Borough has never made a similar commitment.

- NFP's property is the only property served by Segment 1; GI and GCE are the only potential rail customers served by Segment 1.

All of these changed circumstances – none of which existed when CSXT filed its petition for exemption in November, 1998, or when the Board issued its March 9, 1999, Decision – weigh in favor of permitting NFP, which could not comply with the Board's original directive to

file all OFA's by March 19, 1999, to file an OFA for Segment 1 now. This is particularly true in this case, where CSXT is not suffering an operating loss associated with Segment 1, the OFA can be completed well before the arrival of CSXT's extended deadline for exercising its abandonment authority, and, as the record makes clear, allowing NFP to file an OFA for Segment 1 will not prejudice any party.

***B. REFUSING TO ALLOW NFP TO FILE AN OFA FOR  
SEGMENT 1 WILL UNDERMINE THE OFA PROCESS***

In its reply, although the Borough admits that it has no rail use for Segment 1, it nevertheless argues that it should be permitted to acquire Segment 1, outside of the OFA process, in order to preserve rail service to Segment 2, which the Borough plans to convert into a recreational trail:

The Borough should own Segment 1 **because it leaves the possibility of future rail use (although none is now planned) for Segment 2 (which will be rail banked)** rather than moving ownership of Segment 1 into the control of a non-public owner.

(*Borough of Chambersburg's Reply to Petition*, p. 2) (emphasis added). Similarly, CSXT suggests in its reply that NFP and its manufacturer tenants (GI and GCE) should rest their hopes for access to rail service, and thus their capacity to remain competitive with offshore manufacturers, on their ability to negotiate with the Borough: "NFP has an alternative to the OFA process. NFP can negotiate the use of Segment 1 with Chambersburg."(*Reply of CSXT Transportation, Inc.*, p. 6).<sup>2</sup>

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<sup>2</sup> It is precisely because the Foxes were unable to negotiate commercially reasonable terms with the Borough concerning the use of Segment 1 that the Foxes and NFP filed their requests for permission to file an OFA for Segment 1 in August and September, 2003.

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This is not the way the OFA process is supposed to work. As the Board explicitly acknowledged in the Decision that it issued in this matter on January 20, 2004, the OFA process exists to allow members of the shipping public – in this case NFP and its tenants GI and GCE – to maintain access to the national rail network if they are willing to underwrite the cost to do so. The OFA process exists so that a potential shipper whose business' long-term viability depends upon reliable access to the national rail network does not have to surrender the business' future to the whim of a disinterested third party:

Through the OFA program, Congress sought to preserve rail service for the shipping public over a rail line that would otherwise be authorized for abandonment, while allowing an owner that is losing money on the line to sell it for fair market value, by conferring upon financially responsible parties a right to acquire such a rail line for the constitutional minimum value of the property....In interpreting and administering the OFA provisions, including the time frame for submitting an OFA, the Board seeks to accommodate and harmonize Congress' dual objectives of preserving rail service where possible, while protecting the owning railroad from bearing the costs associated with unreasonable delay.

***As the history of this case illustrates, there can be situations in which allowing a late-filed OFA may be consistent with both of Congress' objectives.***

(January 20, 2004, *Decision of the Board*, p.p. 3-4 (citations omitted) (emphasis added)).

Refusing to allow NFP to file an OFA for Segment 1 in this case, where circumstances relating to the affected property have changed so dramatically and where NFP did not have an opportunity to file an OFA in the first instance, will undermine the OFA process. It will deprive the affected members of the shipping public of their ability, at their own expense, to maintain reliable access to the national rail network, and instead force them to place their access to rail service in the hands of a disinterested third party which shares no stake in their success or failure. This is exactly the result that the OFA process is designed to prevent.



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Moreover, even if the Board chooses to credit the Borough's expressed desire to maintain rail service to a recreational trail, the best way to ensure that Segment 2 remains connected to the national rail network is to ensure that Segment 1 remains a part of the national rail network. Permitting NFP to purchase Segment 1 through the OFA process will ensure that Segment 1 remains a part of the national rail network. If anyone along the recreational trail ever needs rail service, then NFP will have an obligation to provide it.

Finally, the Borough still has not ever expressed a commitment to maintain Segment 1 in a condition suitable for rail operations. If, as the Borough says, it only wants to acquire Segment 1 to provide rail service to a recreational trail, then it is reasonable to question what, if any, effort the Borough will make to ensure that Segment 1 is properly maintained.

The dramatic changes in the circumstances relating to Segment 1; NFP's ownership of the only property served by Segment 1; the purpose of the OFA process; NFP's unequivocal commitment to maintain Segment 1 in a condition capable of supporting rail operations; the demonstrated absence of prejudice to any party; the fact that NFP had no previous opportunity to file an OFA within the original timeframe established by the Board – all of these factors weigh in favor of permitting NFP to file an OFA for Segment 1 now. NFP's petition should be granted.

### ***C. NFP HAS DEMONSTRATED THE NEED FOR A STAY***

NFP believes that the need for the Board to stay CSXT's right to exercise its abandonment authority for Segment 1 pending the Board's disposition of NFP's petition is self-evident. If CSXT conveys Segment 1 to the Borough prior to the Board's disposition of NFP's petition, then NFP's petition could be rendered moot.

***D. CONCLUSION***

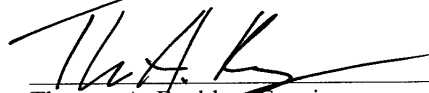
For all of these reasons, Petitioner, New Franklin Properties, LLC, respectfully requests the Board to grant the relief requested in NFP's Petition for Reconsideration.

DATED: March 29, 2005

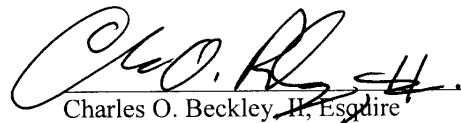
Of Counsel

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Respectfully submitted,

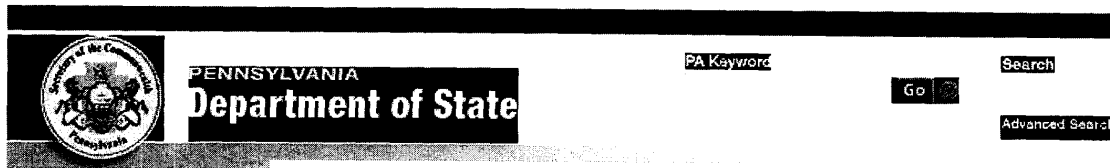


Thomas A. Beckley, Esquire



Charles O. Beckley, II, Esquire

Attorneys for Petitioner New  
Franklin Properties, LLC

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## Entity Details

### Request

- [New Request](#)
- [Free Search](#)
- [General Name Search](#)
- [Old Name Search](#)
- [Orphan Search](#)

### Basic Entity Information

**Entity Type** PENNSYLVANIA LIMITED LIABILITY COMPANY (BUSINESS)  
**Entity Name** NEW FRANKLIN PROPERTIES, LLC  
**Entity No.** 3041677  
**Filing Date** 12/17/2001 **Letter of Consent** No  
**Address** 521 BLACK AVE  
CHAMBERSBURG Pennsylvania USA 17201  
**County** Franklin **Jurisdiction** PA  
**Purpose** BROAD  
**Limited Authority** No

### Corporate Officers

**Updated Date** 12/17/2001  
**President** UNKNOWN  
**Secretary** -  
**Treasurer** -  
**Vice-President** -

### Instrument History

Doc Type	Microfilm#	Micro# Start	Micro# End	Filing Date
LIMITED LIABILITY COMPANY	2001096	1502	1503	12/17/2001

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## EXHIBIT A

**CERTIFICATE OF SERVICE**

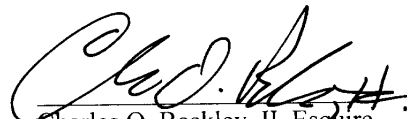
I Charles O. Beckley, II, Esquire, hereby certify that a copy of the foregoing document was served this day upon the persons and in the manner indicated below:

**SERVICE BY FED EX:**

Louis E. Gitomer, Esquire  
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1455 F Street, NW, Suite 225  
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Thomas J. Finucane, Esquire  
Finucane Law Office, LLP  
273 Lincoln Way East  
Chambersburg, PA 17201

DATED: March 29, 2005

  
Charles O. Beckley, II, Esquire